



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,358	11/26/2001	Jules Zecchino	2870/566	2755

7590 08/24/2004

KAREN A. LOWNY, ESQ.  
ESTEE LAUDER COMPANIES  
125 PINELAWN ROAD  
MELVILLE, NY 11747

EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

5M

<b>Advisory Action</b>	<b>Application No.</b> 09/995,358	<b>Applicant(s)</b> JULES ZECCHINO ET AL	
	<b>Examiner</b> Blessing M. Fubara	<b>Art Unit</b> 1615	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 30 July 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: The amendmend to claims 1, 12 and 19 only deleted about so that the pH is now less than 7. This amendment does not change the claim and the prior art applied continues to be relevant. Applicants continue to argue that acidic pH, in this case a pH of less than 7 is required, which the prior art does not teach. Applicants also argue that the declarations by Matathia and Harrison unequivocally demonstrate that the polymeric sulfonic acid gellants are unexpectedly superior in comparison to carbomers or several of the other gelling agents recited in Wheeler and that Examiner's continued assertions that any gellant may be substituted for the gellants in Wheeler are completely unsupported in light of the evidence submitted by applicants as to the unexpected superiority of the Applicants' claimed polymeric sulfonic acid gellants in gelling biliquid form-containing aqueous dispersion to form a low pH (less than 7) stable product. Applicants further argue that Wheeler does not suggest a stable biliquid foam and that although Wheeler proposes a biliquid foam composition in example 3, the extremely large amount of surfactants (>50%) present in Wheeler takes the composition of Wheeler outside the definition of a biliquid foam as is known in the art (low levels of surfactant, i.e. less than about 1% surfactant). Applicants further state that example 3 of Wheeler would not be a stable biliquid foam with a pH of 6.5 without the excess surfactant. Applicants' argument is not persuasive. Applicants admit of stable biliquid foam in the example 3 of Wheeler. Wheeler discloses a composition at pH 6.5 in example 3 (applicants confirm). The instant composition does not exclude surfactants. Specifically, dependent claim 3 recites the presence of at least one surfactant. It is not until dependent claim 11 that there is a recitation of less than about 1%. This means that the generic claim which does not exclude surfactants and which does not recite the less than about 1% surfactant does not meet the argument for less than about 1% surfactant. The declaration is not commensurate with the scope of the claims.

It is noted that the after final amendment filed on 07/30/04 does not comply with the format for amendments. Only amended claims 1, 12 and 19 were provided. The formant for amendment requires that a listing of all claims be provided, currently amended, previously amended, previously presented and original, all claims having respective status identifier must be presented in the amendment in the listing of the claims that would replace all prior versions of the claims.

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600